CF1001

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IN THE HIGH COURT OF JUDICATURE OF CHHATTISGARH AT BILASPUR

WRIT PETITION NO. 4202 OF 2006

PETITIONER :: SMT. NEERA MANHAR, WIFE OF SHRI SUKHIRAM MANHAR, AGED ABOUT 32 YEARS, SARPANCH GRAM PANCHAYAT THOOTHI, R/O. VILLAGE THOOTHI, TAHSIL JAIJAIPUR DISTRICT JANJGIR-CHAMPA (C.G.)

VERSUS

RESPONDENTS :(1) Dr.B.L.TIWARI, COLLECTOR "(Ex) Collector, Janjgir-Champa" [illegible], AT PRESENT COLLECTOR, KABIRDHAM KAWARDHA (C.G.)

: 2) SHANTI BAI, WIDOW OF BHUKHAN, AGED ABOUT 45 YEARS, R/O. THOOTHI, TAHSIL JAIJAIPUR DISTRICT JANJGIR-CHAMPA (C.G.)

I.A. No. 4271/06 Presented by Sh. R.L.Baghel dated 4/8/06

Allowed

Deleted as per Court order date 10.10.06 R.L.Baghel 10.10.06

Resp No 1 & 2 Deleted amendment interpreted as per Hon'ble Court order date 11.9.06 15.9.06 (1)

S.R. Kaushik OATH COMMISSIONER BILASPUR TAHSIL & DIST.

Attested 3/8 ARO 4/9/06

RECEIVED-COPY 4/8/06 CLERK to A.G. BILASPUR

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:4) STATE OF CHHATTISGARH
ACTING THROUGH SECRETARY
PANCHAYAT DEPARTMENT, DKS
BHAWAN, RAIPUR (C.G.)

WRIT PETITION UNDER ARTICLE 226/227 OF THE CONSTITUTION OF INDIA FOR ISSUANCE OF APPROPRIATE WRIT/WRITS, ORDER/ORDERS, DIRECTION/DIRECTIONS etc.

AFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

Writ Petition No. 4202 of 2006

Petitioner — Smt. Neera Manhar

Versus

Respondents — Ex Collector, Janjgir Champa & others

SB: Hon'ble Mr. Justice **Satish K. Agnihotri, J**

Shri K. A. Ansari, Senior Advocate with Shri Imtiyaz Ali, Advocate for the petitioner.

Shri N. K. Agrawal, Deputy Government Advocate with Shri Sushil Dubey, Govt. Advocate for the respondents No. 1 and 3.

None for the respondent No.2.

Miss Pushpa Dwivedi, Advocate for the Caveator.

ORDER

(Passed on this 7th day of December, 2006)

1. The petitioner has impugned the order dated 13.3.2006 (Annxure P/12) passed by the Collector in Panchayat Case No. 37/A-89/(23)/2004-2005 wherein the entire proceeding was held ex-parte after recording that the petitioner declined to receive notice and thereafter the notice was affixed. The petitioner, an elected Sarpanch of Gram Panchayat Thoothi, Janpad Panchayat Jaijaipur, District- Janjgir Champa, was held to be disqualified under the provisions of Section 36 (m) of the Panchayat Raj Adhiniyam 1993. The post of Sarpanch was accordingly declared as vacant.

2. The petitioner being aggrieved, filed a review petition before the Collector, who dismissed the review petition vide order dated 25.7.2006 (Annexure P/18) on the ground that there is no provision for review of the order passed by the Collector. The

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petitioner can very well go in appeal or revision under the provisions of Section 91 of the Adhiniyam, 1993.

3. Shri K. A. Ansari, learned Senior Advocate appearing for the petitioner relied on a decision of the Supreme Court in the case of United India Insurance Co. Ltd. Vs. Rajendra Singh & others {(2000) 3 SCC 581} in support of his submission that if the order has been obtained by committing fraud, then every Courts or Tribunals, irrespective of the fact whether power of review before it is provided or not, it has to review its order. This judgment of the Supreme Court was cited before the Collector also in review petition. The Collector has completely ignored the decision of the Supreme Court, observing that the same is not applicable to the case.

4. Having heard learned counsel for the parties and having perused the record, a show cause notice contained a mere mention that "लेने से इंकार किया ". Thereafter, the same was scored out and it was recorded, the notice was affixed in accordance with law. Where the notice was affixed and at what time the notice was affixed is not indicated. The words "लेने से इंकार किया " was also scored out. From the reading of the notice it is clear that the finding of the Collector in his order dated 13.3.2006 "अनावेदिका द्वारा उक्त नोटिस लेने से इंकार किया गया । तो उसे कारण बताओ नोटिस गवाहों के समक्ष चस्पा विधि से तामील किया गया ।" is factually incorrect. Further looking into the report of the S.D.O.(Revenue) Sakti, addressed to the Deputy Director, Panchayat & Social Welfare, Janjgir Champa, the Sub Divisional Officer (Revenue) has reported that the youngest child of the petitioner Ku. Atit was born before 26th January, 2001 i.e. on 12.8.2000. The Collector has proceeded

ex-parte, ignoring the report of the Sub Divisional Officer without affording an opportunity of hearing to the petitioner.

5. The facts of this case are squarely covered by the decision of the Supreme Court in the case of **United India Insurance Co. Ltd.** (supra) wherein in paragraphs 13, 14 and 16 has held as under:-

> "13. In S.P. Chengalvaraya Naidu v. Jagannath[2] the two-Judge Bench of this Court held: (SCC p. 2, para 1)
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> "Fraud avoids all judicial acts, ecclesiastical or temporal' observed Chief Justice Edward Coke of England about three centuries ago. It is the settled proposition of law that a judgment or decree obtained by playing fraud on the court is a nullity and non est in the eyes of law. Such a judgment/decree - by the first court or by the highest court – has to be treated as a nullity by every court, whether superior or inferior. It can be challenged in any court even in collateral proceedings."
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> 14. In Indian Bank v. Satyam Fibres (India) (P) Ltd.[3] another two-Judge Bench, after making reference to a number of earlier decisions rendered by different High Courts in India, stated the legal position thus: (SCC p. 563, para 23)
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> "23. Since fraud affects the solemnity, regularity and orderliness of the proceedings of the court and also amounts to an abuse of the process of court, the courts have been held to have inherent power to set aside an order obtained by fraud practised upon that court. Similarly, where the court is misled by a party or the court itself commits a mistake which prejudices a party, the court has the inherent power to recall its order."
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> 16. Therefore, we have no doubt that the remedy to move for recalling the order on the basis of the newly-discovered facts amounting to fraud of high degree, cannot be foreclosed in such a situation. No court or tribunal can be regarded as powerless to recall its own order if it is convinced that the order was wangled through fraud or misrepresentation of such a dimension as would affect the very basis of the claim."

6. In the case on hand, the order dated 13.3.2006 was clearly passed on the basis of mis-representation made by the applicant/respondent No. 2 (Shanti Bai). The applicant did not produce the enquiry report sent to the Deputy Director, Panchayat & Social Welfare, Janjgir Champa by the Sub Divisional Officer (Revenue). The fact with regard to refusal of notice by the non-applicant/petitioner was also contrary to the record, as stated above. Thus, the impugned order appears to have been obtained on mis-representation of the facts.

7. For the reasons aforementioned and the dictum laid down by the Supreme Court, the petition is allowed and the impugned orders dated 13.3.2006 and 25.7.2006 are quashed. No order asto costs.

Sd/-
Satish K. Agnihotri
Judge

Thakur